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C O N F I D E N T I A L SECTION 01 OF 03 KABUL 000540

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SUBJECT: 2009 AFGHAN PARLIAMENTARY REVIEW

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Classified By: Acting Deputy Ambassador Joseph A. Mussomeli; reasons 1.
4 (b) and (d).

11. (C) Summary: Parliament struggled to find relevance in 2009 to both serve as a springboard for legislative activity and as a counterweight to the Palace. Chronic absenteeism among Lower House MPs during the latter half of the year further limited Parliament's legislative effectiveness. Similarly, President Karzai's dismissive attitude toward Parliament promoted an already existing adversarial relationship between the Palace and Parliament; only 12 out of 28 laws approved by Parliament were gazetted and passed into law. The continuing absence of meaningful political parties also made marshaling legislative efforts in either the Upper or Lower houses difficult. Parliament's Lower House showed a surprising burst of political will at the end of the 2009 legislative session by refusing to confirm 17 of Karzai's initial slate of 24 Cabinet nominees and then again by rejecting 10 of the 17 names the President nominated two weeks later. End Summary.

The ABCs of Afghanistan's Legislative Process

12. (U) In Afghanistan, legislation can originate in the Executive Branch (when Parliament is in recess, the President can issue a Presidential Decree), or in the Legislative Branch (bills may be introduced in either the Upper or Lower House, or Meshrano Jerga and Wolessi Jerga, respectively). In the former instance, after the President issues a Presidential decree, the law is subject to Parliamentary review. Bills introduced by either the Upper or Lower House follow the familiar path of passing from one House to the other upon receiving a majority vote by MPs. Once the bill passes both Houses, it goes to the President, who has 15 days to approve or veto the bill. If the President approves the bill, it is submitted to the Ministry of Justice and becomes an enforceable law after being published in the Gazette. If the President vetoes the bill, the draft legislation returns to the House originating the bill for further deliberation. If the bill is subsequently modified, it re-enters the cycle described above. The Lower House also has the ability to override a Presidential veto by a 2/3 vote. Additionally, a bill is considered approved and enforceable if the President takes no action on the bill within 15 days of his receipt of the bill.

The Lower House's Legislative Prominence

13. (C) The Lower House is the more meaningful of the two Houses in terms of legislative initiatives. Lower House Speaker Qanooni is a very effective legislator, skillfully herding the notoriously fractious MPs along whichever path he

chooses to pursue. Qanooni sets the agenda for the Lower House's proceedings and uses that authority to effectively move, or stall, legislation. For example, he tabled debate on the Private Security Companies Bill and referred it to the Commission on the Implementation and Oversight of the Constitution. Inasmuch as this Commission does not yet exist, Qanooni's action effectively killed parliamentary action on it.

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Strained Parliament-Palace Relationship Stymies Legislation
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¶4. (C) The relationship between Karzai and the Parliament continued to be as strained in 2009 as in previous years. MPs regularly complain to us that the President rides roughshod over Parliament, including in ways that contravene the Constitution. MPs cite Karzai's handling of the Media Law as representative of his willingness to act in a high-handed manner that ignores Parliament's prerogatives as well as the Constitution. Both houses of Parliament passed the Media Law in 2007. Karzai opposed provisions of the law that weakened his control of the media and vetoed it. In September 2008 the Lower House overrode the President's veto. According to the Constitution, the Lower House's veto override vote paved the way for enactment of the Media Law and it should have been published in the Gazette. However, the Ministry of Justice (presumably on orders from Karzai) did not gazette the law until July 2009. In the interim, Karzai obtained from the Supreme Court a favorable ruling declaring the "undesirable provisions of the law" unconstitutional. As a result, the version of the law gazetted was precisely what Karzai wanted.

¶5. (C) Karzai often employs this tactic to block
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legislation from passing into law. Article 94 of the Constitution stipulates that legislation passed by both Houses and passed to the President is considered "approved and enforceable" if the President takes no action within 15 days of receipt of the legislation. Despite Article 94, the President routinely receives legislation passed by Parliament and takes no action; until the law is gazetted, it is not considered an enforceable law. In 2009, Parliament passed 28 laws, of which nine were signed by Karzai, gazetted and passed into law. Two other laws were passed by both houses, were not acted on by Karzai, but were subsequently gazetted and passed into law. Yet another bill passed into law after the Lower House overrode a presidential veto. The fate of the remaining 16 laws is unclear. We find that some laws, after a period of months, appear in the Gazette; others do not and remain in a legislative "twilight zone" and are not considered "approved and enforceable".

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The Scorecard
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¶6. (U) The following laws were passed by both houses of Parliament and signed into law by the President in 2009:

- Mining Materials Law. Regulates mine ownership and other aspects related to mining.
- Law on Water. Establishes protections for water sources.
- Income Tax Law. Sets tax rates and tax procedures.
- Law on Foreign Citizens, Travel, Work and Stay. Regulates issues related to foreign citizens' entry, work and stay in Afghanistan.
- Law on Certified Documents Issued in Embassies and Consulates of Afghanistan. Regulates fees for certification of legal documents.

- Law on Mortgage of Immovable Assets in Banking Transactions. Law aims to secure debt and contracts using immovable property.
- Law on Movable Assets in Banking Transactions. Outlines rights and responsibilities of the parties to a transaction.
- Law on Customs Duties. Details not available.
- Law on Transit. Regulates transport affairs.

¶7. (U) Additionally, two laws were passed by the Upper and Lower houses, were not acted on by Karzai, but were passed into law after being published in the Gazette. A third law was enacted subsequent to a Lower House override of a Karzai veto:

- Transit Law. Regulates transport affairs.
- Police Law. Regulates the structure, responsibilities, and duties of the police.
- Political Parties Law. Sets forth law on the establishment, functions and rights of political parties. This law was initially vetoed by Karzai, then passed after the Lower House overrode his veto.

Two laws enacted in 2009 that garnered much attention (Elimination of Violence Against Women Law and the Shia Family Law) began as Parliamentary initiatives. Both under debate when Parliament went on summer recess, at which time Karzai stepped in and enacted both through Presidential Decree, circumventing Parliament's deliberations.

Parliament Its Own Worst Enemy

¶8. (C) Despite Karzai's machinations, Parliament is often its own worst enemy. Effective political parties (or, effective political leaders) would ideally drive legislative agendas in Parliament. The absence of either (excepting Speaker Qanooni) in either the Upper or Lower House makes marshaling support for any legislative agenda difficult. The tendency of MPs to vote along ethnic, linguistic, or geographic lines, rather than according to a belief in the e The Embassy plans to augment its support to civil society and political parties holding democratic ideals to help empower them and lend them a more prominent voice. Currently, these groups have little political influence. However, if they eventually gain a stronger voice in Parliament, the law could someday be amended. End Summary.

-----ia Article 94 of the Afghan Constitution, which many interpret to provide for automatic passage in the absence of presidential action. While the publication of the law is only now coming to the attention of the public, it appears it has been technically, though not practically, enforceable for nearly three years.

New Law, Old Policy

¶4. (U) The law grants "general amnesty for purpose of reconciliation" to all parties involved in hostile conflict before the establishment of the interim government. It promises the benefits of the law, including freedom from prosecution, to current armed opposition groups and individuals if they join the reconciliation process. However, the law still permits individual victims or their families to bring cases to trial in accordance with Sharia law. (Comment: Many human rights activists argue that individual victims could not successfully argue their cases in Afghanistan's fragile court system and the ongoing presence of warlords in the Afghan government will prevent individuals from taking their cases to court.)

¶5. (SBU) The law's blanket amnesty may conflict with a number of international treaties to which Afghanistan is a signatory, including the International Bill of Human Rights and the International Treaty on War Crimes and Crimes Against Humanity, Genocide, and Terrorism. The law also contradicts Afghanistan's own Action Plan for Peace, Justice, and Reconciliation (announced by Karzai in December 2006), which states that the Government of Afghanistan "is committed to establishing accountability institutions and to taking the necessary accountability measure in accordance with the nationally and internationally accepted norms on war crimes, crimes against humanity and obvious violations of human rights."

¶6. (C) Considering the current weak state of Afghanistan's judicial system, the Amnesty Law is likely to supersede international treaties and national policies for one key reason: it involves doing nothing. The Afghan government has not prosecuted individuals for committing war crimes in the past, and had no plans to begin trials before the publication of the Amnesty Law. How international treaties and national

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legislators receive payments from, variously, the Pakistanis, the Iranians, the Russians, and Karzai in return for their votes on issues.

¶9. (C) Parliament's inability to enact legislation is also rooted in Lower House MPs' dismal attendance record, particularly during the latter half of 2009. No official record is kept of MPs' attendance record, but we note that by November 2009 the inability of the Lower House to muster a quorum became so routine that Speaker Qanooni resorted to shaming truant MPs by announcing their names at the beginning of each Parliamentary session (absent a quorum, Parliament may debate but may not vote on legislation).

¶10. (C) Comment: Parliament is largely ignored by the Palace, rendered impotent by an inability to effect legislation, and fractured by ethnic, linguistic, and regional loyalties. The only bright spot can be seen in the Lower House's very surprising activism at year's end during confirmation hearings for Karzai's Cabinet (Cabinet nominees must be confirmed by the Lower House). Most observers predicted that Karzai would push through his list of Cabinet nominees with little opposition. Instead, Karzai faced an energized Lower House who faced him down on issues such as timing of sending the names of Cabinet nominees to the Lower House and naming his candidate for Foreign Minister. The most surprising show of Parliament's independence was their unexpected refusal to confirm 17 of Karzai's 24 Cabinet nominees on 2 January and 10 of the second tranche of 17 nominees on January 16. We can expect at least some of Parliament's year-end surge of independence and activism will continue in the lead up to the September 18, 2010, Parliamentary elections. End Comment.

Eikenberry